

Application Serial No: 10/672,969
In reply to Office Action of 02 April 2004

Attorney Docket No. 82829

REMARKS / ARGUMENTS

Claims 1-13 are currently pending in the application. No claims are allowed. Claims 1-13 are rejected to. Claims 1, 3, 5, 6 and 10 are amended by this office action. Claims 2 and 4 are canceled without prejudice

The Examiner has rejected claims 1, 6, 7, 10, 11 13 under 35 U.S.C. § 102(b) as being anticipated by Meeker (Reference D: 3,217,599) contending that the reference discloses an underwater apparatus inherently capable of operating and performing in the manner claimed comprising a plurality of air bags (item 12), a canister arranged to hold a device (item 10), an air bag inflator (item 43) capable of launching the said canister, relating to claims 6, 10, the said canister comprises a device to be launched (see for example, Column 3, lines 50-58) and is complete with top and bottom enclosures as disclosed in Figure 1, relating to claim 7, the said air bags are supported at the top of the canister enclosure (Figure 1), relating to claims 11, 13, the reference discloses the said air bag connected to said canister (see Figures 2, 3) with the means for inflating by air (Column 4, lines 26-61).

The Examiner noted the case law, In re Ludke, 169 USPQ 563, In re Swinehart, 169 USPQ 226, In re Fitzgerald, 205 USPQ 594, In re Best et al, 195 USPQ 430, and In re Brown, 173 USPQ

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685,688 concerning the limitations which are considered to be inherent in a reference.

The Examiner further noted that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from prior art apparatus" if the prior art teaches all the structural limitations of the claim. In re Masham, USPQ2d 1647. The Examiner further indicated that claims directed to apparatus must be distinguished from prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528,531. He also indicated that apparatus claims cover what a device is, not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

The Examiner has rejected claims 1-4, 6-11, 13 under 35 U.S.C. § 102(b) as being anticipated by Brown (Reference E: U.S. Patent No. 3,137,203) contending that the reference discloses an underwater missile launching apparatus comprising an air bag (item 17), a canister (item 13) arranged to hold a device (item 14), an air bag inflator system (items 18,21) capable of launching the said canister, relating to claims 2-4, the said canister is arranged to be supported in a water tight container/submarine launching tube with hatch (item 11, as shown in Figure 1), relating to claims 6, 10, the said canister comprises a device to be launched (item 14) and is complete with

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top and bottom enclosures as disclosed in Figure 1, relating to claim 7, the said air bags are supported at the top of the said canister enclosure (Figure 1), relating to claim 8, the said air bag inflator system (items 18, 21) are supported on the said container structure as shown in Figure 1, relating to claim 9, the said canister/container system is part of an underwater/submarine vessel, relating to claims 11, 13, the reference discloses the said air bag connected to said canister with the means for inflating by compressed gas/air (Column 3, lines 10-58).

The Examiner has rejected claims 1, 6, 7, 9, to 11, 13 under 35 U.S.C. § 102(b) as being anticipated by Obara (Reference A: U.S. Patent No. 6,252,822) contending that the reference discloses an underwater missile launching apparatus comprising an air bag (item 12), a canister (item 10) containing a countermeasure device, an air bag inflator system (items 16,20) capable of launching the said canister, relating to claims 6,10, the said canister comprises a device to be launched (Column 2, lines 53+) and is complete with top and bottom enclosures as disclosed in Figure 1, relating to claim 7, the said air bags are supported at the top of the said canister enclosure (Figure 1), relating to claim 9, the said canister/container system is part of an underwater/submarine vessel (Column 1, lines 21+), relating to claims 11, 13, the reference discloses the said air

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bag connected to said canister with the means for inflating by compressed gas/air (Column 3, lines 54+).

The Examiner has rejected claims 1-11, 13 under 35 U.S.C. § 102(b) as being anticipated by Vass et al (reference C: U.S. Patent No. 4,003,291) contending that the reference discloses an underwater missile launching apparatus comprising an air bag (item 30), a canister (item 19) arranged to hold a device (item 21), an air bag inflator system (items 34, 35) capable of launching the said canister, relating to claims 2-4, the said canister is arranged to be supported in a water tight container launching tube with hatch as shown in Figure 2, relating to claim 5, the reference discloses a tether system (items 40, 45, 46), between said container (item 11) and canister platform (item 16) relating to claims 6, 10, the said canister comprises a device to be launched (item 21) and the said container is complete with top and bottom enclosures as disclosed in Figure 2, relating to claim 7, the said air bags are supported at the top of the said canister enclosure (Figure 1), relating to claim 8, the said air bag inflator system (items 34, 35) are supported in the said container structure as shown in Figure 2, relating to claim 9, the said canister/container system is part of an underwater structure, relating to claims 11, 13, the reference discloses the said air bag connected to said canister with the means for inflating by compressed gas /air (Column 3, line 10).

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The Examiner has rejected claims 1, 11, 12 under 35 U.S.C. § 102(b) as being anticipated by Murray et al (Reference M: U.S. Patent No. 4,919,065) contending that the reference discloses an underwater launching apparatus that is inherently capable of operating and performing in the manner cited in the claims, comprising a central tube (item 7) inflatable by means of a pyrotechnic/gas generator device (item 15) connected to an inflatable air bag (Column 3, lines 5-14), a canister (item 1) container a device, and relating to claim 11, the said canister is connected through intermediate structures to said central tube/air bag system as shown in Figure 1, and relating to claim 12, the reference discloses a gas generator system for inflating said air bag (item 15).

These rejections and objections are respectfully traversed in view of these amendments and remarks.

Brown appears to teach a missile launching system wherein a capsule containing a missile is ejected from the vertical tube of a conventional missile launching submarine. The capsule rises to a predetermined depth wherein it waits for a predetermined time. At the expiration of this time, the capsule rapidly rises and breaks the water surface and as the capsule is in mid air, the missile is fired.

Vass et al appear to teach an underwater multiple missile launcher comprising a platform, a plurality of missile launching

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tubes disposed at acute angles to a normal to the surface of said platform whereby missiles launched from said tubes will be launched along divergent paths which define a predetermined pattern, said tubes mounted for limited pivotal movement on said platform for compact storage in parallel positions and for movement to the acute angle positions upon deployment of the launcher, an initially collapsed inflatable bag secured to said platform between said tubes for pivoting said tubes to their acute angle positions upon inflation thereof and for rendering said platform buoyant, a mooring cable attached to said platform, and anchor means connected to said mooring cable for holding said platform adjacent the sea bottom.

Applicants have amended claim 1 by incorporating the limitations of claims 2 and 4 therein. The amended claim 1 has a scope similar to the original claim 4. Claim 1 is further amended to indicate that the container can be removably attached to a hull of the vessel. Claims 2 and 4 are canceled without prejudice. Applicants respectfully suggest that this makes the Examiner's novelty rejections concerning Meeker, Obara and Murray moot because these rejections are not applied to the limitations in claim 4.

Claims 1, 6 and 10 are amended to redefine the "device to be launched" as the "payload to be launched." The specification is amended to collectively identify the "weapon, vehicle or

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other device" as the "payload". Applicants believe that this clears up potential confusion in the claims between the device mentioned in the preamble and the payload inside the canister.

Concerning the Examiner's § 102 rejection of claims 1-4, 6-11, 13 as being anticipated by Brown, Applicants respectfully suggest that Brown does not teach the current limitations of these claims. Brown does not teach the container being removably attachable to a hull of the vehicle. The launch tube taught by Brown is a vertical launch tube positioned within the hull of a submarine. This vertical launch tube is not removable from within the hull of the submarine. Additionally, Brown does not include a hatch as part of the container 11. Brown at column 2, lines 17-22 indicates that tube 11 must be pumped with seawater via opening 12 at the bottom of tube 11. The top of tube 11 is not discussed. Applicants suggest that in view of these amendments, Brown does not teach every element of Applicants invention because the container taught by Applicants is completely different from that taught by Brown. Applicants respectfully solicit reconsideration and allowance of claim 1 as amended and dependent claims 3, 6-11 and 13.

In addition to the distinctions provided above, claim 9 teaches a tether that is not disclosed in Brown. The Examiner is reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either

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expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants request clarification concerning the Examiner's remarks concerning claim 9 that the canister/container system is part of an underwater vehicle. In view of the amendments to claim 1, Applicants suggest that while the container may be positioned on an underwater vehicle, it is not "part of" the underwater vehicle. Applicants respectfully suggest reconsideration and allowance of claim 9.

Concerning the Examiner's § 102 rejection of claims 1-11, 13 under 35 U.S.C. § 102(b) as being anticipated by Vass et al., Applicants respectfully suggest that Vass et al. do not teach the current limitations of these claims. Applicants suggest that while Vass et al. teach many disjointed elements, these elements are not joined together in the same way as those taught by the Applicants. In Vass et al., the air bag inflator is attached to a structure that supports canisters 19, not directly to the canisters. The Vass et al. structure is prelaunched. The air bag inflators do not act to launch the canisters. Concerning claim 5, the tether extends between the structure and the container, not between the canister and the container as claimed by Applicants. Concerning claims 7, 8 and 11, the air bag inflator is not positioned on the canister so these

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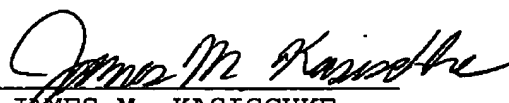
limitations cannot be shown by Vass et al. Concerning claim 9, the tether does not extend between a canister and an underwater vehicle because it is not joined to the canister. In view of these amendments and arguments, Applicants respectfully request allowance of claims 1, 3, 5-11 and 13.

Applicants respectfully suggest that all grounds for rejection have been addressed and request reconsideration and allowance of the application.

The Examiner is invited to telephone James M. Kasischke, Attorney for Applicants, at 401-832-4736 if, in the opinion of the Examiner, such a telephone call would serve to expedite the prosecution of the subject patent application.

Respectfully submitted,
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